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In the Supreme Court of the United States

OCTOBER TERM, 1975

FRANK W. OLIVER,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS ex rel. HON. ALFRED E. WOODWARD, Judge,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS FOR THE SECOND JUDICIAL DISTRICT

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May it please the Court:

Petitioner Frank W. Oliver prays that this Court's Writ of Certiorari issue to review the decision of the Appellate Court of Illinois for the Second Judicial District. A copy of that court's opinion is attached as Appendix "A".

Reference to Reports

The opinion of the Appellate Court of Illinois is reported at 25 Ill. App. 3d 66 and at 322 N.E.2d 240. The Order of the Supreme Court of Illinois denying leave to appeal to that court, Appendix "B" *infra*, is unreported.

Statement of Grounds on Which Jurisdiction Is Invoked

The opinion of the Appellate Court of Illinois was rendered on January 20, 1975 (Appendix "A" *infra*). A timely petition for leave to appeal to the Supreme Court of Illinois, authorized by Illinois Supreme Court Rule 315, was denied on May 27, 1975 (Appendix "B" *infra*). The mandate was issued on June 19, 1975. Judgment has been stayed pending the outcome of proceedings in this Court.

Jurisdiction to review the judgment by Writ of Certiorari is conferred upon this Court by Title 28 U.S. Code, Section 1257(3).

Questions Presented for Review

1. Where no consideration of security or confidentiality is present, may a state trial judge command a defendant in a criminal case to participate in definitive proceedings in chambers, over the defendant's objection predicated on his right to a public trial?

Under such circumstances, may a defense lawyer's refusal to participate in proceedings in chambers, and his insistence that all proceedings occur in open court, be punished as contempt?

2. Is due process of law denied when a criminal defense lawyer is punished for contempt by proceedings initiated after completion of the trial, on the ground that his argument to the jury had been improper, where no act or statement on his part is specified as contemptuous or improper, and where his request for such specification is denied?

And is due process further denied if the contempt conviction is affirmed by substantial reliance upon comments to which no objection was made at trial; to which no reference was made by the sentencing judge; and of which no mention was made in any brief or argument on appeal?

3. Does the imposition of a contempt penalty upon a criminal defense lawyer in an equivocal situation, and in the absence of clear necessity, constitute a constitutionally impermissible impairment of the Sixth Amendment right to counsel by reason of its chilling effect upon the vigor and independence of the defense bar?

Constitutional Provisions and Statutes Which the Case Involves

Amendment VI to the Constitution of the United States provides, in relevant part:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . ."

Amendment XIV to the Constitution of the United States provides, in relevant part:

> "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . ."

An Illinois Statute, S.H.A. Ch. 56½, § 704, provides, in relevant part:

> "It is unlawful for any person knowingly to possess cannabis." [Penalty provisions follow.]

An Illinois Statute, S.H.A. Ch. 56½, § 705, provides, in relevant part:

> "It is unlawful for any person knowingly to manufacture, deliver, or possess with intent to deliver, or manufacture, cannabis." [Penalty provisions follow.]

STATEMENT OF THE CASE

Petitioner Frank W. Oliver, an Illinois lawyer, acted as defense attorney in the state criminal trial of one Michael Seymour, who was charged with facilitating the sale of marijuana to certain Illinois police undercover agents.

Seymour's role was that of an intermediary between the illegal sellers and the agent-purchasers.

The defense theory was that Seymour had at all times been aware that the purported marijuana purchasers were in fact policemen (Tr. 3-5), and that he participated in the transaction only for the purpose of cooperating with them in their law enforcement activities (Tr. 6; 62-64; 68-70).

During cross examination of an agent, it was demonstrated that shortly prior to consummation of the purchase, Seymour chanced to observe one of the agents sending a radio message from his car. Nonetheless, Seymour proceeded to complete the transaction.

Petitioner's opening statement was delivered after the prosecution had rested. In that statement petitioner attempted to outline the defense theory that Seymour had done nothing more than consciously assist people whom he knew to be policemen, in furtherance of their lawful activities, and with completely innocent intent. However, on the state's objections he was blocked in every such attempt (Tr. 5-6).

After several prosecution objections were sustained, Mr. Oliver inquired whether he was permitted to tell the jury what the defendant, as a witness, would testify concerning his intent. The prosecution objected to such disclosures and the court sustained the objection (Tr. 6).

Petitioner stated that if Seymour would not be permitted to testify to his intent he would rest at that time. The trial judge responded: "All right. If this is the way you desire to try your case, fine." (Tr. 7).

• • •

The opinion of the appellate court states that "the trial court had *not* ruled that intent was not an element of the

crime" (App. 3, emphasis copied). That analysis is only correct as applied to the Judge's first and tentative ruling. Throughout the trial, the judge held consistently—although in that one instance somewhat equivocally—that intent was not an element of the crime, and that the issue was irrelevant.

That holding was based upon the trial judge's interpretation of the Illinois statutes under which Seymour was prosecuted (S.H.A. Ch. 56½ §§ 704 and 705) which authorize punishment of one who "knowingly" possesses or transfers cannabis. The trial judge consistently expressed the view that the requisite mental state of the offense was only knowledge and not criminal intent. The extent of his acceptance of that notion was demonstrated dramatically and conclusively during the summations, prior to any suggestion of contemptuous conduct on the part of petitioner.

During his argument to the jury, the prosecutor stated that he was required only to show that Seymour had knowingly possessed marijuana. Petitioner responded to that argument by holding the marijuana exhibit in his hand in the presence of the jury and arguing that although he was then knowingly possessing marijuana he was not guilty of an offense because he had no criminal intent (Tr. 10-12). The prosecution objected that petitioner was "misstating the law" (Tr. 12). In response to that objection, the trial judge observed that petitioner was "not on trial in this case. • • • If there is another case it will come up later, but we will try this case now." (Tr. 12).

We repeat that this episode preceded any allegedly contemptuous conduct by petitioner. For all practical effect, the trial judge had ruled that it is a criminal offense for a defense lawyer to handle marijuana exhibits for purposes of illustration during argument to the jury!

Every instruction tendered by the defense on the issue of intent, was refused (Tr. 69). In its brief in the appellate court, the state did not dispute the fact that the trial judge had ruled that the defendant's intent was irrelevant (*Cf.* State brief, p. 4). The proposition is also manifest from the transcript of the hearing of Seymour's motion for a new trial (Tr. 61 *et seq.*), wherein the petitioner argued without effect that criminal intent is a necessary element of any crime punishable by imprisonment in the penitentiary. The trial judge's response was to point out that the cases cited by petitioner had not arisen under the marijuana statute (Tr. 64). Petitioner ultimately attempted, without success, to convince the trial judge that intent must be an element of the offense, since otherwise a policeman who seized marijuana in the course of his duties would be guilty of a felony (Tr. 68).

The trial judge's rulings during petitioner's opening statement clearly establish that the judge regarded Seymour's intent as irrelevant. There is no other possible explanation for the sustaining of objection to such remarks as "[Seymour] will testify that he then believed . . ." (statement never completed, objection sustained, Tr. 5); and "At the time that [Seymour] met [the agents] he knew that they were policemen"(comment stricken, Tr. 5-6).

• • •

The First Charge of Contempt: Refusal to Enter Chambers

During petitioner's opening statement the prosecution had requested that all argument on the admissibility of evidence concerning Seymour's intent be heard in chambers. Petitioner responded: "No, why don't we just do it here? Why do you always want to run into chambers?

* * * I am not going to hide." (Tr. 6). Impliedly, petitioner's refusal to enter chambers was upheld and the proceedings were conducted in open court.

There had been at least one prior discussion in chambers. In that connection, petitioner had informed the trial judge that his client objected to such conferences and considered them an indication of possible corruption (Tr. 73, 78).

The appellate court opinion states that the record is equivocal on this issue (App. 10). But the opinion also notes that one such discussion had been conducted without a court reporter (App. 9). When reminded of the event during the post trial hearing the trial judge did not dispute it, and by strong implication agreed that the defendant's objection to chamber conferences had been brought to his attention prior to the event giving rise to the contempt citation.

The first charge of contempt is predicated *in its entirety* upon the following events which occurred during Mr. Oliver's closing argument:

• • •

> Mr. Oliver: Now, in that connection, [what was Seymour's intent?] you may recall that a couple of days ago I started to make an opening statement preparatory to putting on proof of the defendant's case, and when I got to the point of telling you that Mike Seymour would get on the stand and tell you how he interpreted what was going on and what his intent was,—
>
> The Court: Counsel, I think we had better go into chambers.
>
> Mr. Oliver: I don't want to go into chambers, Judge.
>
> The Court: Let's go into chambers right now.

Mr. Oliver: No, I am not going to go into chambers. This is a public trial and I am going to have a public trial.

The Court: Bring the attorney in, Mr. Bailiff." (*The trial judge thereupon left the bench,* Tr. 81-82).

"Mr. Oliver: (*addressing the Bailiff only,* Tr. 82) I will not go into chambers unless I am—are you going to do it by force? You will have to do it by force, sir. Make your arrest. I am not going to do it. I am not going to do it. I am not going to go into chambers, under no circumstances. (Tr. 17).[1]

The trial judge then returned to the courtroom, Tr. 83, and ordered the jury to retire to the jury room, Tr. 17.

• • •

In the ensuing colloquy, Mr. Oliver stated that he had insisted upon remaining in the courtroom "because the defendant in this case is entitled to a public trial in all stages of the proceeding".

The trial judge stated that his only purpose had been to admonish Mr. Oliver not to comment on any rulings which the court had made.

The trial judge did not state or intimate that Mr. Oliver was then in contempt. To the contrary, his only statement was that Mr. Oliver *would be* held in contempt "if you comment in respect to any ruling which the court has made in this matter, which is not appropriate for the jury to hear • • •" (Tr. 17-20).

The contempt proceedings were not initiated until after the jury returned its verdict. At that time, the court is-

[1] The Appellate Court opinion recites these events in such manner as to make it appear that Mr. Oliver's remark was addressed to the trial judge. But the record clearly discloses that the judge had left the courtroom, and that the remark was addressed only to the Bailiff.

sued an oral specification of contempt which is in its entirety as follows:

> "Mr. Oliver, I would like to cite you for contempt for your refusal to accompany the Court to chambers as I requested. For your refusal to accompany the bailiff to chambers as I requested.
>
> You made it necessary for me to excuse the jury and send them into the jury room in order that we could discuss something that the Court felt was necessary." (Tr. 50-51).

Appellant was fined $250.00 on this specification. In subsequently explaining his ruling, the trial judge made the following comment:

> "... as far as a public trial is concerned, I am sure that it is well recognized that the only reason we go to chambers to get outside the presence of the jury, not to get outside the presence of the public, and if this [desire for public proceedings] had been the difficulty that you experienced at that time, I'm sure all you would have had to have done was say, 'Your Honor, would you excuse the jury,' as I did, as I was compelled to do.
>
> Mr. Oliver: Judge, I stated, your Honor, I don't want to give up the right to a public trial.
>
> The Court: Right.
>
> Mr. Oliver: But your Honor was insisting upon the chambers procedure rather than sending the jury out.
>
> The Court: Only because the jury was in the box.
>
> Mr. Oliver: Your Honor should have sent the jury out of the box.
>
> The Court: This is all you had to do, if this is what you were really complaining about. The thing that I don't like and the reason—the bad thing about this is that things such as did happen occurred in the presence of the jury who has to decide this case, give your client and the State a fair trial, and this is why I did it and why I feel I must adhere to my position." (Tr. 83-84).

THE SECOND CHARGE OF CONTEMPT:
"REFERENCE TO MATTERS THAT THE COURT SUSTAINED OBJECTIONS TO"

The first interruption of Mr. Oliver's summation culminated in the following direction from the trial judge:

> "If you comment in respect to any rulings the court has made in this matter, which is not appropriate for the jury to hear, and they are to hear the evidence, in that event you are going to be found in contempt by this court."

Mr. Oliver sought further clarification. The court provided it:

> "I am just warning you at this time that you are not to comment to the jury in respect to any of the rulings that this court has made. * * *
>
> Mr. Oliver: Well, I am only going to tell them, your Honor, what took place in open court; that there was an objection; the objection was sustained and that the defense rested.
>
> The Court: Okay.
>
> Mr. Oliver: May I proceed?
>
> The Court: Yes." (Tr. 17, 20)

No violation of those guidelines by Mr. Oliver is charged, and none was disclosed of record. Mr. Oliver proceeded to an extended closing argument, which evoked a total of five objections. Three of them were overruled. Two of them were sustained. Even within the framework of the objections made, however, there was no suggestion that Mr. Oliver had commented on the court's ruling, thereby violating the directions to him, or that he had gone beyond the scope of the argument which the court had previously said would be proper.

Both of the objections are cited in the Appellate Court's summary of Mr. Oliver's argument (App. 5, 6).

At the conclusion of the trial, Mr. Oliver was cited for contempt in that "in your final argument you repeatedly made reference to matters that the court sustained objection to." (App. 7).

Mr. Oliver requested that the court specify any instances of misconduct in argument. The trial judge refused to do so, stating:

> "I am sure that the record in this proceeding will speak for itself in that regard." (Tr. 55)

The subsequent written contempt order, entered *ex parte* after the adjudication had been made, also fails to present any slightest specification as to what portion of Mr. Oliver's argument was deemed improper.

The "allegories" cited by the Appellate Court (App. 5, 6) were never suggested to be contemptuous at any stage prior to the pronouncement of the Appellate Court opinion, and had never been even mentioned by the State, either in its brief or in its argument on appeal. They reflect, instead, an independent analysis of Mr. Oliver's argument by the Appellate Court for the purpose of determining whether the argument contained matter which that Court considered to be justification for the contempt citation.

Stage of Proceedings at Which the Federal Questions Were Raised

1. REFUSAL TO ENTER CHAMBERS: When first ordered into chambers, petitioner refused on the ground that his client was entitled to a public trial. After the jury had been excused, petitioner repeated: "Defense counsel insists upon staying in the courtroom because the defendant in this case is entitled to a public trial in all stages of the proceedings." (Tr. 19-20). In the Illinois Appellate Court

in his opening brief (Br. 27) and in his petition for leave to appeal to the Illinois Supreme Court (Pet. 11), petitioner expressly cited and relied upon the provision of the 6th Amendment to the Constitution of the United States which confers the right to a public trial.

2. IMPAIRMENT OF THE 6TH AMENDMENT RIGHT TO ASSISTANCE OF COUNSEL: When first cited for contempt, petitioner expressly urged that the effect of the citation was to impair his client's right to assistance of counsel (Tr. 52). Impairment of the federal constitutional right to assistance of counsel was expressly cited in his opening brief in the Appellate Court (Br. 18-19). The chilling effect of the proceedings on the right to assistance of counsel was further cited in his petition for leave to appeal to the Supreme Court of Illinois (Pet. 20).

3. SPECIFICATION OF CHARGES: Immediately upon being cited for contempt petitioner requested a specification of the charges against him, and stated that he had not obstructed the performance of any lawful judicial act. His request was denied, the trial judge stating "that the record in this proceeding will speak for itself in that regard" (Tr. 55). In his Appellate Court brief, he repeated his complaint (Br. 30-33) and, citing decisions of this court, urged that restriction of contempt power to cases of clear necessity is mandated by the federal constitution (Br. 24-25). In his petition for leave to appeal to the Supreme Court of Illinois he again urged that the failure to specify the acts constituting contempt was a denial of federal due process (Pet. 14-15).

The due process implications of the Appellate Court's affirmance upon a basis not previously urged, necessarily did not arise until the Appellate Court issued its opinion.

In his petition for leave to appeal to the Supreme Court of Illinois, petitioner expressly stated that the affirmance of his contempt citation on a basis other than that for which it was imposed was a denial of federal due process (Pet. 14-15).

Federal Proceedings

No prior federal proceedings have been had in this matter.

ARGUMENT

1. Refusal By A Defense Lawyer to Conduct Definitive Proceedings in Chambers Is Not Contemptuous.

The 6th Amendment right to a public trial is applicable to the states by virtue of the due process clause of the 14th Amendment. *Argersinger* v. *Hamlin,* 407 U.S. 25, 28 (1972).

However, the right to a public trial simply cannot coexist with a claim of right in the trial court to insist upon conducting a definitive part of the proceedings in chambers, out of the view of the public and therefore under a clandestine cloak of secrecy.

The right becomes meaningless if over the defendant's objection, the definitive rulings in litigation are entered in closed proceedings in chambers. In such circumstances the appearance of a public trial is preserved but the proceedings are subject to all of the potential for abuse and loss of public confidence that would occur if the entire proceedings were conducted in secret.

The opinion of the Appellate Court would authorize a trial judge to order defense counsel into chambers at any time he regards such a procedure convenient, and for any purpose other than the reception of evidence before the jury. Presumably with equal force, a judge could order that arguments on motions and objections be heard at his home during the evenings while trial is in progress. Thus, to Michigan's "portable grand jury" (*In Re William Oliver,* 333 U.S. 257, 263 (1948)) we would now add the portable court.

It cannot tenably be suggested that the right to a public trial means nothing more than that the public may be

present only when the jury is present. Assuming no disorderly behavior or security considerations—and certainly none was presented in this case—"an accused is at the very least entitled to have his friends, relatives and counsel present" (*In re Oliver, supra,* 333 U.S. 271) whenever the judge takes action affecting him.

The Appellate Court opinion would authorize the result reached below on several rationales. But it is stark truth that each of those arguments would be equally apposite and tenable if the trial judge had ordered petitioner to enter chambers without his client—or, indeed, if the trial judge had ordered petitioner to file a waiver of trial by jury on behalf of his client.

The Appellate Court notes that petitioner had previously participated in several discussions *in camera* (App. 9). But this proves nothing more than that petitioner behaved reasonably rather than arbitrarily. The right to public proceedings was waived when, in his judgment, it was reasonable and not prejudicial to do so. It is equally clear, however, that he had previously refused to enter chambers when he thought it would be disadvantageous to do so (Tr. 6). Any right, including the right to trial by jury, can be waived. But a consent to argue one point in chambers is certainly not a consent to adjourn to chambers whenever the trial judge so desires.

Implicit in the very notion and purpose of the constitutional right to a public trial as delineated by this court (*In re William Oliver, supra,* 333 U.S. at 270) is the right of a defendant to decide: "I will insist that the judge take his action publicly, because I think it less likely that he will act arbitrarily in public than in private."

The Illinois Appellate Court, in rejecting the foregoing view, held that petitioner was under a duty ". . . to *educate* his client . . ." as to the supposed harmlessness of secretive

proceedings (App. 10). We insist that such was not petitioner's duty; indeed that his proper course was to caution his client of the dangers of secret proceedings if it represented petitioner's sincere belief. The situation is indistinguishable from that in which a lawyer or client might decide: "I elect to exercise my right to trial by jury because I do not trust the trial judge to rule fairly on the factual issues." That freedom of choice is the very essence of any constitutional right, and finds reflection in the right to assistance of counsel.

The right to counsel becomes meaningless if counsel is not to be permitted to exercise a value judgment as each trial situation arises. A waiver of objection to one leading question cannot be deemed a waiver as to every leading question which may thereafter be propounded; and a waiver of right to public proceedings for one discussion cannot be regarded as a waiver of a right to public proceedings for all discussions.

A different perspective might be justified if it could be said that petitioner suddenly "trapped" the judge by objecting to a procedure which he had consistently accepted under prior and indistinguishable circumstances. But that is not the case here. Regardless of any equivocation in the record as to whether the trial judge had been informed that the client objected to such conferences, there can be no question whatever that on at least one prior occasion petitioner had flatly and unequivocally refused to the conduct of proceedings in chambers and that the trial judge had acquiesced in that refusal (Tr. 6).

Nor can the procedure be justified in terms of convenience to the Court or insulation of the jury from prejudice. A constitutional right can not be denied for the convenience of the court. And the jury can be insulated

simply by sending them to the jury room. In fact, after adjudging petitioner in contempt the trial judge stated that to avoid a contempt ruling "I'm sure all you would have to have done was to say, 'Your honor, would you excuse the jury' as I did, as I was compelled to do." (Tr. 84).

But if, as the trial court thus conceded, petitioner was entitled to have the judge remain in the courtroom and excuse the jury, then it is difficult to see how the contempt citation can be affirmed, as the appellate court did, on the grounds that the petitioner's refusal to leave the courtroom caused the trial judge to return to the bench (App. 11). It is only on that basis that the Appellate Court distinguishes this case from *In Re McConnell*, 370 U.S. 230 (1962). The Appellate Court reasons that in *McConnell* the trial disruption consisted only in a conference in chambers, whereas in the case at bar the trial disruption consisted in causing the trial judge to conduct the proceedings in the courtroom (App. 11). With some confidence we hope that your Honors will not regard this distinction as impressive.

There is no suggestion that petitioner behaved in a boisterous manner or adopted any disrespectful tone of voice. The first specification of contempt is based entirely and exclusively on his refusal to adjourn to chambers.

In short, petitioner, an attorney, was held in contempt for refusing to waive a constitutional right of his client.

2. Due Process Requires That The Basis for A Contempt Citation Be Specified with Reasonable Certainty.

Even at this late stage, it is impossible to say with any assurance whether petitioner was held in contempt for arguing an issue—the intent of his client—which the trial

judge regarded as irrelevant, or whether he was held in contempt for commenting on the state's objections, or whether he was held in contempt for commenting on the judge's rulings.

As your Honors held in *Eaton* v. *City of Tulsa,* 415 U.S. 697, 698-699 (1974), "The question is not upon what evidence the trial judge *could* find petitioner guilty, but upon what evidence the trial judge *did* find the petitioner guilty."

Petitioner was held in contempt because "in your argument you repeatedly made reference to matters that the Court sustained objections to." (Tr. 50; App. 7). Petitioner requested specification of the improper references, but his request was refused (Tr. 54).

After any trial, civil or criminal, it would be possible to cite a lawyer for contempt for "repeatedly making improper remarks and asking improper questions." A subsequent combing of the record would always elicit some basis for such a citation. It is for that very reason that your Honors held in *Eaton,* following *Cole* v. *Arkansas,* 333 U.S. 196 (1948) that a contempt citation must be affirmed on the same charge on which it was imposed, or not at all. Prior to the publication of the opinion below, the law of Illinois was the same. *People* v. *Miller,* 51 Ill. 2nd 76, 78 (1972).

The second contempt specification, dealing with petitioner's allegedly contemptuous argument, was, at the time of its entry, based in its entirety upon the following allegation, "[I]n your final argument you repeatedly made reference to matters that the Court sustained objection to." (Tr. 50) It would be equally tenable to say that this citation means: (a) That the petitioner referred to defendant's intent—a "matter that the court sustained objection to"; or (b) That petitioner referred to the prosecutor's making of objections that the court sustained; or (c) that petitioner referred to the fact that the court had sustained objections.

The situation is undifferentiated. The Appellate Court concedes—as the trial court assuredly did not—that to argue the issue of defendant's innocent intent would have been proper (App. 3), and does not specify whether petitioner was in contempt by referring to the making of objections or to the sustaining of the objections.

But the trial court's formal written contempt judgment prepared at leisure days later and entered *ex parte* to complete the record, very expressly holds that defendant was in contempt for having "made repeated references to matters excluded upon objection and not in evidence, *being the intent of the defendant at the time of the offense . . .*" (App. 8, emphasis added). Thus, the judgment is predicated at least in very significant part, upon an area of argument that was held to be proper by the very appellate court that affirmed that judgment.

The Appellate Court, for its part, affirms principally upon the basis of certain "allegories" encompassed within petitioner's argument to the jury (App. 5, 6). But it is the bald fact that no objection was made to those "allegories" when petitioner recited them, nor were they even mentioned in the presentation made by the state to the Appellate Court in support of the contempt judgment—not even mentioned, directly or indirectly, nor relied upon in any way. At no time prior to the Appellate Court opinion was the petitioner furnished any hint that those allegories were regarded as improper, much less contemptuous. Had some objection been made to them at the time, peti-

tioner would have been alerted to the claim of impropriety and could certainly have avoided a contempt ruling. Such, in fact, is the very purpose of an objection. *U.S.* v. *La Franca*, 282 U.S. 568, 570 (1937). That retraction hopefully could have been made in terms which would not have prejudiced his client; otherwise we would hope and believe it would not have been made. But petitioner was entitled to the chance. The procedures adopted here not only border on entrapment but constitute a denial of the fundamental right to know the nature and cause of a criminal accusation. Amendment VI, United States Constitution.

In short: the Appellate Court combed the record and sustained the contempt judgment on a basis other than that on which it was imposed.

This is a fundamental denial of due process. If a statement by a lawyer merits an adjudication of contempt, it must at least deserve some reference at the trial level.

3. A Contempt Citation Against A Criminal Defense Lawyer Imposed in An Equivocal Situation and Not Accompanied by Any Disruption, Constitutes A Constitutionally Impermissible Chilling of The Right to Counsel.

The representation of criminal defendants mandated by this Court in *Argersinger* v. *Hamlin*, 407 U.S. 25 (1972) cannot be achieved in an atmosphere of fear and submissiveness. We hold no brief for disruption, disrespect or boisterousness. But if the defense lawyer must try his case in an atmosphere of concern lest a subsequent critical scrutiny of the record may show some improper action on his part, then his devotion to the interests of his client must be diluted correspondingly.

American history demonstrates a tendency toward "drastic delimitation of the broad undefined power" of contempt. *Nye* v. *United States*, 313 U.S. 33, 45 (1945). Its restriction to cases of clear necessity is constitutionally binding upon both the federal and state judiciary. The historical development which "narrowly confined" and "subsequently curtailed" the summary contempt power (*Nye, supra*, 313 U.S. at 47-48) is presently the substantive basis for the general power to punish criminal contempt in both federal and state proceedings. *Bloom* v. *Illinois*, 391 U.S. 194, 203-204 (1968).

This principle is especially compelling as applied to the criminal defense lawyer. If his performance of a duty as he conceives it, involving no disruption or boisterousness, exposes him to the threat of contempt, "it is hardly debatable that some advocates may lose their zeal for forthrightness and independence." *Maness* v. *Myers*, 43 LW 4143, 4149, Jan. 14, 1975. As noted in *Maness* (fn 16), "A lawyer cannot be timorous in his representation." *American Bar Association Standards Relating to the Administration of Justice*, 1974 Ed., 109-110.

The judgment here submitted for review is ultimately destructive of that principle. A lawyer has been held in contempt for refusing to waive his client's right to a public trial, and on the basis of an argument which was deemed improper, but where the elements of that impropriety are the subject of fundamental disagreement between the adjudicating and affirming courts. If the office of counsel is to become as hazardous as the judgment below would make it, the right to counsel must become ephemeral.

In defending Seymour, petitioner was confronted with an unusually serious professional challenge. The trial judge had ruled that criminal intent was not an element of the offense of the possession of marijuana. Indeed, he had gone so far as to hazard that counsel might himself be guilty of a felony by touching the marijuana exhibits in the course of the trial. Thus petitioner was burdened in his activities as a defense lawyer by a ruling which can only have appeared to him to be the gravest of error. Simply to have rested on that error without further complaint, might well have been considered by a court reviewing Seymour's conviction, as a failure of professional responsibility—a trapping of the court into error by failure to protest. *Cf. United States* v. *Holmes,* 452 F.2d 249, 268 (7 Cir. 1971). Moreover, it was clearly his responsibility to attempt, if possible, to win his case—or, indeed, at the very least, his point—at the trial level, rather than to subject his client to the expense and uncertainty of an appeal.

Petitioner was required to serve all these interests without obstructing the process of justice. That he did, and did well, as the record shows. In post-trial proceedings, the trial judge stated that he did not feel that Mr. Oliver's conduct had been such as to require vindication of the court itself, and that he "was undoubtedly endeavoring to do everything that he could in the defense of his client". (Tr. 77).

That was nothing more than petitioner's sworn duty. Given the same circumstances, no lawyer could have confidence in his ability to conduct a trial without leaving a record which, on subsequent analysis, might support a generalized finding of contempt.

The chilling effect of the outcome of this case upon the right to effective assistance of counsel, is itself an adequate basis for application of this Court's corrective process.

Conclusion

For the foregoing reasons we pray your Honors will deem this case worthy of review and that the judgment will be reversed.

Respectfully submitted,

Melvin B. Lewis
Attorney for Petitioner

APPENDIX

APPENDIX A

(OPINION OF THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT)

(Decided January 20, 1975)

No. 73-88

The People of the State of Illinois ex rel. Hon. Alfred E. Woodward, Judge

Plaintiff-Appellee

vs.

Frank W. Oliver, an attorney,

Defendant-Appellant.

Appeal from the Circuit Court of the 18th Judicial Circuit, DuPage County, Illinois.

Mr. JUSTICE HALLETT delivered the opinion of the court:

This is an appeal from a judgment finding defense attorney Frank Oliver guilty of contempt during a criminal trial and fining him $350. Briefly stated, the specifications of contempt are: (1) that, in the presence of the jury, he refused to enter chambers when requested to do so by the court, and (2) that, during closing argument, he repeatedly referred to the trial judge's rulings after the court had warned him that such comments would be regarded as contemptuous. The issues presented for review are: (1) whether the right of the defendant in the case-in-chief to

a public trial justifies his counsel's refusal to enter into an *in camera* discussion; (2) whether the contempt order is void for lack of specificity; (3) whether the statements made by Oliver during the course of his closing argument violated the court's admonition to refrain from comment on the court's rulings; and (4), assuming that Oliver did violate the court's admonition in respect to his closing argument, whether such comments constitute contempt if there was no material disruption of the court proceedings.

After reviewing the record, we affirm the trial court.

The conduct, upon which the citation for contempt is based, occurred during the criminal trial of one Michael Seymour for unlawful possession and delivery of cannabis sativa, in which Oliver represented the defendant. On December 13, 1972, after the State had rested its case, Oliver delivered his opening statement, which had been deferred until that time. In the course of this statement, Oliver told the jury that his client would testify to his intention or state of mind at the time of the alleged transaction and would testify that he was then cognizant of the agent's identity and was merely aiding them in the apprehension of the primary marijuana dealer. The State objected to the admissibility of the defendant's testimony concerning his intention or state of mind. The court ruled that the defendant could not directly testify as to his intention and that the intention of the defendant was a conclusion to be drawn from the facts. (Transcript 7) Thus, the court held that statements concerning the defendant's intent made during the opening statement were improper since such direct testimony would not be admissible. At that point, Mr. Oliver stated that since the defendant was precluded from testifying to his intent in the transaction, the defense elected to rest its case. An *in camera* discussion, which was not transcribed, was held, and the jury was excused for the day.

It appears from the record that the next acts sequentially were the closing arguments of State and defense. The main thrust of Oliver's argument to the jury was that intent was a crucial element in this offense, and he urged the jury to infer from the facts that the defendant did not possess the requisite criminal intent necessary to a finding of guilty, but rather that the defendant, cognizant of the agents' identity, had merely attempted to aid them in the arrest of the dealer in marijuana. It should be noted that the trial court had *not* ruled that intent was not an element of the crime. Rather, the trial court's ruling only precluded direct testimony of the defendant as to his intent, or state of mind, and indeed, permitted the jury to infer the defendant's intent from any facts in evidence. Thus, in arguing defendant's lack of criminal intent from the facts in evidence, Oliver was merely urging the jury to draw an inference of innocent intent. This argument was well within the bounds of advocacy during closing argumentation. After Mr. Oliver had argued what he believed was the reasonable inference of intent from the facts in evidence, the following occurred during his closing argument to the jury:

> Mr. Oliver: Now, in that connection, you may recall that a couple of days ago I started to make an opening statement preparatory to putting on proof of the defendant's case, and when I got to the point of telling you that Mike Seymour would get on the stand and tell you how he interpreted what was going on and what his intent was,—
>
> The Court: Counsel, I think we had better go into chambers.
>
> Mr. Oliver: I don't want to go into chambers, Judge.
>
> The Court: Let's go into chambers right now.
>
> Mr. Oliver: No, I am not going to go into chambers. This is a public trial and I am going to have a public trial.

The Court: Bring the attorney in, Mr. Bailiff.

Mr. Oliver: I will not go into chambers unless I* am—are you going to do it by force? You will have to do it by force, sir. Make your arrest. I am not going to do it. I am not going to do it. I am not going to go into chambers, under no circumstances.

The Court: All right, the jury will go into the jury room right at this time.

(The jury retired to the jury room, after which the following proceedings were had in open court, outside the hearing and presence of the jury:)

The Court: Mr. Oliver, are you aware of the fact that the Court has made certain rulings in this case and you are now taking up with the jury rulings that the Court has made, which is none of their business. The instructions so state it, and I am warning you at this time, if you comment in respect to any rulings the Court has made in this matter, which is not appropriate for the jury to hear, and they are to hear the evidence, in that event, you are going to be found in contempt by this Court. Now, you may proceed with your argument.

Mr. Oliver: I have stated, your Honor, what took place in the presence of the jury.

The Court: I am just warning you—

Mr. Oliver: And they observed me rest and I propose to remind them that they saw me rest.

The Court: I am just warning you at this time that you are not to comment to the jury in respect to any of the rulings that this Court made.

(Transcript 17, 18)

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* This footnote and its referent asterisk are not part of the Appellate Court opinion. Counsel for petitioner takes this method to advise this Court that the record shows unequivocally (Tr. 81-83) that before petitioner uttered this remark, the trial judge had left the bench and entered chambers. The remark was addressed only to the bailiff. After the statement was completed, the trial judge returned to the bench and uttered the words next quoted, directing the jury to go to the jury room.

After this episode, Mr. Oliver continued to argue the defendant's lack of criminal intent. Without republication of the remainder of Mr. Oliver's closing argument, the following excerpts are pertinent to the second specification of contempt.

Mr. Oliver: Now, this is a fair evaluation of what took place, rather than this inference that they are trying to create that the arrangement all the time was with Mike Seymour.

And you see, that is why he objected when I wanted to go into the Lisle Bowl thing. Wanted to keep the evidence out. Didn't want you to hear it.

Mr. Kilander: Your Honor, I have got to object to comments of why objections are made.

The Court: Sustained. Counsel has a right to make objections and this is not proper argument before the jury, and I instruct you to cease that type of argument, Mr. Oliver.

(Transcript 23)

Mr. Oliver: As I say, we don't have any direct evidence of intent here, which might sound something like "I understood they were policemen; I observed they were policemen; I wanted to help them. I couldn't talk to them easily, but I felt they understood. I couldn't talk to them because there were people around that they were trying to catch".

And you know, it is funny, because these kinds of explanations are the kind that we sort of accept in everyday life.

(Transcript 34)

At this point, Mr. Oliver related to the jury two allegorical situations. One concerned a child who had taken a piece of forbidden candy. He concluded this story by stating:

In everyday life we let them tell us what their intentions are, and then we weigh those intentions or their account of their intentions against inferences

that we may draw from facts. That is the way we operate in everyday life.
(Transcript 35)

The second allegory concerned a man with a gun who observed his worst enemy being pursued by a lion. The man with the gun fired it, killing the one who had been his worst enemy. The conclusion of this allegory was followed by the following statement:

> Now, you see, in everyday life we would expect a fellow who is asked about that or charged with it to be able to stand up in front of 12 people or 50 people or a thousand persons or one person or his God and to say, "I really didn't intend to hit the man. I don't care if he was my enemy. I intended to hit the lion".
>
> I wish I might have provided you with that direct evidence of intention, and believe me, when I suggested that I would do so, I did not intentionally suggest something that I thought to be improper, because in my mistaken way, for 20 years now, I have thought, always thought, that that was the very best evidence of intention in a courtroom, what a man said was in his head.
> (Transcript 36)

Later, Mr. Oliver stated to the jury:

> I don't think in any event we would be chargeable with absence of evidence.
>
> Number one, the law doesn't require us to put in evidence. *Number two, the State objected to the evidence I did want to put in which might have—*
>
> The Court: Counsel, that is improper comment and you are to cease and desist. I have warned you before.
> (Transcript 39)

Subsequently, the jury returned a verdict of guilty. After the conclusion of the trial, the court proceeded as follows:

> The Court: Now, that completes this.

> Mr. Oliver, I would like to cite you for contempt for your refusal to accompany the bailiff to chambers as I requested.
>
> You made it necessary for me to excuse the jury and send them into the jury room in order that we could discuss something that the Court felt was necessary.
>
> Further, in your final argument you repeatedly made reference to matters that the Court sustained objections to.
>
> Now, defendants are entitled to every right that they have in the book.
>
> But also if the State makes a mistake, why the defendant gets a new trial.
>
> If the defendant's counsel takes advantage of the situation and goes beyond the rules, the only thing it seems to me we have to do is cite you for contempt.
> (Transcript 50, 51)

The court stated that it had waited until the conclusion of the trial to cite Oliver in order to avoid delaying the proceedings. A summary hearing on the contempt citation was then held wherein Oliver was given the opportunity to and did argue that his actions and statements were not contemptuous. At the conclusion of this hearing, the court found him guilty of contempt and fined him $250 on the first specification of contempt and $100 on the second specification.

The contempt order, insofar as this appeal is concerned, *inter alia,* recited:

> 4. That on December 15, 1972, during the closing argument being made in behalf of the said Michael Seymour, the defendant, Frank Oliver, was requested by the Court to retire to Chambers for the purpose of discussing an objection that had been made and rueld upon by the Court; that the defendant, Frank Oliver, refused to accompany the Court into Chambers when requested, he then refused to accompany the Bailiff into Chambers as directed by the Court, and by

reason of the foregoing the Court might confer with counsel pertaining to the objection then pending before the Court.

5. That later in said proceedings on the same date and during the final argument, the defendant, Frank Oliver, made repeated reference to matters excluded upon objection and not in evidence, being the intent of the defendant at the time of the offense; further, after being admonished in this regard by the Court, he continued to comment in the presence of the jury upon the rulings made by the Court on said objections.

6. That the conduct of the defendant, Frank Oliver, which took place in front of this Court while in open session and in the presence of the jury, tended to impede and interrupt the proceedings and lessen the dignity of this Court.

Subsequently, Oliver moved to vacate the findings and fines and, when that was denied, this appeal was taken.

Contempt has been defined as "acts . . . which are 'calculated to embarrass, hinder or obstruct a court in its administration of justice or to derogate from its authority or dignity, or bring the administration of law into disrepute.' " (*In re Estate of Melody* (1969), 42 Ill. 2d 451, 452, 248 N.E. 2d 104, 105.) (*People* v. *Miller* (1972), 51 Ill. 2d 76, 78, 281 N.E. 2d 292, 293.) This court is mindful that the contempt power is an extraordinary power of the court, and as such, should be exercised only in extreme situations. The court recognizes both the duty of an attorney as an advocate of his client's cause and the duty of the trial judge as a fair and impartial administrator of justice. Although these duties are not inherently opposed to one another, often the two conflict. To avoid such conflicts between bench and bar, a balance must be struck between the role of the lawyer and the role of the trial judge.

Having briefly summarized the nature of the contempt power, we now consider the more specific issues presented

for review with regard to the first specification of contempt. Oliver contends that he was justified in refusing to enter Chambers based on his client's right to a public trial. He further contends that the court had been made aware of his client's desire to curtail *in camera* discussions, and that in light of this, the court should have excused the jury in lieu of holding an *in camera* discussion.

That the defendant is entitled to a public trial is an uncontroverted constitutional mandate. However, we doubt that, in this case, the right to a public trial would have been infringed by an *in camera* discussion. It has been stated that "[T]he right to a public trial is violated only by a blanket exclusion of members of the public". (*People* v. *Dronso* (1967), 83 Ill. App. 2d 59, 70, 226 N.E. 2d 460, 466.) Moreover, the court has recognized the propriety of holding *in camera* discussions when ruling upon objections.

> "It is common practice in trials for a court to hold a conference in chambers to determine whether or not an objection should be sustained. Afterwards, when the trial is resumed, the court rules in the presence of the jury that the objection is sustained. We find no prejudice in this procedure." *People* v. *Jackson* (1968), 98 Ill. App. 2d 97, 98, 240 N.E. 2d 364, 365.

In the case at bar, there appear from the record to have been numerous *in camera* discussions, to which Oliver did not object. Indeed, in the record before us, one of these discussions had been conducted without the presence of a court reporter. In every jury trial, there are numerous side-bar and in chambers discussions. Mr. Oliver, an experienced attorney, is certainly familiar with the propriety of these discussions. It is the duty of the trial judge in a jury trial to protect the jurors from prejudice, and it is for this reason that side-bars and in chambers discussions are held. The trial judge, as administrator of a fair and

impartial trial, was under a duty to conduct an *in camera* discussion to safeguard the jury from undue prejudice.

Indeed, the purpose of the judge in ordering the discussion out of the presence of the jury was to warn Oliver that further statements to the jury regarding the propriety of the court's rulings would be regarded as contemptuous. To have warned Oliver of this in the jury's presence might have placed him in an unfavorable light and prejudiced the jury against his client. Thus, Judge Woodward's request for the *in camera* discussion to warn Oliver certainly was not for the purpose of depriving the defendant in that case of a public trial, but rather to insure that Oliver would not be placed in an unfavorable and prejudicial light in representing his client.

Oliver contends in this court that the trial judge had been informed of defendant Seymour's "distress at the frequency with which proceedings had been conducted in chambers", and that therefore, the trial court should have excused the jury rather than order an in chambers discussion. Although this is alluded to in the post-trial portions of the transcript, there is nothing in the record before us indicating that Judge Woodward had such knowledge at the time the incident occurred. Even if we assume that the trial judge had knowledge of Seymour's offended sensitivities to *in camera* discussions, we find defendant-contemnor's argument to be without merit. Again, it is the duty of the trial judge to direct the course of the trial and administer justice fairly and impartially. It was the responsibility of Mr. Oliver to educate his client to the purposes of side-bar and in chambers discussions. The failure of Oliver so to illuminate his client or the particular sensitivities of his client cannot be asserted as an attempt to shift the responsibility for the incident to the trial judge.

With respect to the first specification of contempt, we find that there was an obstruction of justice. Defendant

urges us to reverse this citation on the basis of the similarity between the case at bar and *In re McConnell* (1962), 370 U.S. 230, 8 L.ed. 2d 434, 82 S. Ct. 1288, wherein counsel was found not to be contemptuous in stating that he would continue his line of questioning "until some bailiff stops us". However, the cases must be viewed in the respective factual situations. In *McConnell,* the attorney's remark, although threatening and insulting to the judge who had ordered that a particular line of questioning cease, did not result in an actual obstruction of justice. There, after a brief in chambers discussion, the trial proceeded. Here, on the contrary, we are confronted with a situation in which the trial judge had ordered Oliver into his chambers and had already left the bench in expectation that his request would be heeded. Oliver's refusal to accompany the judge compelled the judge to return to the bench and to excuse the jury in order to avoid a physical altercation between the bailiff and Oliver. In this case, there was a confrontation and a disruption in the proceedings, directly caused by Oliver's conduct. The judge was, after and by this confrontation, forced to accede to the demands of Oliver by returning to the bench. That the authority of the court was diminished and brought into disrepute by Oliver's behavior, which occurred in the presence of the jury, cannot be denied. We are of the opinion that the case at bar differs from *In re McConnell* when viewed in its factual setting. We must and do conclude that Oliver's conduct was calculated to and did embarrass, hinder and obstruct the court in its administration of justice.

With respect to the second specification of contempt, defendant contends that the order lacks specificity as to what statements of the defendant violated the court's admonition to refrain from comment on the trial court's rulings. Defendant further argues that, assuming the defendant

did violate this admonition, no actual and material disruption of the proceedings occurred.

It is not disputed that there must be a written order entered by the trial court and that such order must set forth the grounds upon which the contempt citation is based. This written order must contain not merely the opinions or conclusions of the trial judge, but rather the facts. (*People* v. *Miller* (1970), 130 Ill. App. 2d 637, 645, 265 N.E. 2d 175, rev'd. on other grounds (1972), 51 Ill. 2d 76, 281 N.E. 2d 292). Moreover, it has been held that no part of the essential facts can be supplied by presumptions or inferences. (*People* v. *Loughran* (1954), 2 Ill. 2d 258, 118 N.E. 2d 310; *People* v. *Koniecki* (1961), 28 Ill. App. 2d 483, 487, 171 N.E. 2d 666.) Defendant contends that *People* v. *Miller* (1970), 130 Ill. App. 2d 637, 645, 265 N.E. 2d 175, rev'd. on other grounds (1972), 51 Ill. 2d 76, 281 N.E. 2d 292.) stands for the proposition that either the order *or* the record must identify with precision the basis for the contempt ruling. We disagree with defendant's argument as to the meaning of *Miller*. While the order must be factual and specific in nature, this court is not prevented from reviewing the record on appeal *together with the order*. Indeed, it has been held that specific facts constituting the basis of a direct contempt may be incorporated by reference, if not set forth in the order itself. (*People* v. *Tavernier* (1943), 384 Ill. 388, as cited in *People* v. *Baxter* (1972), 50 Ill. 2d 286, 289, 278 N.E. 2d 777; *In re Magnes* (1972), 8 Ill. App. 3d 249, 254, 290 N.E. 2d 378.) Although it is preferable to set forth the facts with specificity in the order itself, the court upon review will consider the record to determine the correctness of the contempt order. *People* v. *Baxter* (1972), 50 Ill. 2d 286, 289, 278 N.E. 777.

After examining the order, we find that it does set forth the factual basis of the contempt with sufficient specificity in light of the record. Although it might have been preferable for the order to contain with verbatim precision from the transcript the statements constituting "repeated reference to matters excluded upon objection and not in evidence", (Order par. 5), we do not find the order void. In our statement of the facts, we have quoted extensively from the transcript those portions of the record which demonstrate Oliver's repeated reference to matters not in evidence. The record substantiates the court's finding of fact as set forth in the order of contempt. We find that the order contains facts rather than conclusions or opinions of the trial judge, and that this court may look to the record to determine if a finding of fact, (that Oliver made "repeated reference to matters excluded upon objection and not in evidence,") is substantiated. The order contains the finding of fact; the record contains the evidence supporting the finding of fact.

Having reviewed the record, we hold that Oliver's statements, as reflected above, did violate the court's admonition to refrain from comment on the court's rulings.

The final issue concerning the second specification of contempt is whether the element of an actual disruption of the proceedings is essential to a finding of contempt. Oliver's position is that the finding based on the second specification should be reversed because there was no actual and material disruption of the court proceedings. Defendant would require pandemonium, chaos, confusion, or delay in the proceedings before the court is justified in invoking its contempt power. As we have noted previously, the contempt power should be exercised with caution and all due regard for the role of the attorney as an advo-

cate. In the heat of a trial, particularly in closing argument, it may be difficult to strike a balance between the role of the judge as an administrator of fair and impartial justice and the role of the attorney as an advocate. This court recognizes that liberality should guide the judge. However, it is also the duty of the trial judge to set limitations on argument in order to ensure orderly, expeditious, and fair trial proceedings. (*In re Magnes* (1972), 8 Ill. App. 3d 249, 254, 290 N.E. 2d 378.) Indeed, even the federal courts, which apparently consider actual and material obstruction of the proceeding an essential element of contempt, have stated:

> "[T]his is not to say that attorneys may press their positions beyond the court's insistent direction to desist. On the contrary, the necessity for orderly administration of justice compels the view that the judge must have the power to set limits on argument. We simply encourage judges to exercise tolerance in determining those limits and to distinguish carefully between hesitating, begrudging obedience and open defiance." *In re Dellinger* (7th Cir. 1972), 461 F. 2d 389, 399.

In the case at bar, the record establishes that the trial judge did set limits on the closing argument by warning Oliver not to comment further on the rulings of the court. Such a limitation is proper, since the wisdom of our rules of evidence and the correctness of the judge's rulings with respect to them are not matters for the consideration of the jury, but rather are matters of law solely for the court, which one may challenge only on appeal. Hence, the limitation imposed upon closing argumentation was proper and was one of which Oliver had foreknowledge.

We realize that some federal courts' position on this matter differs from ours (*In re Oliver,* 7th Cir. 1972, 470

F. 2d 10), but we conclude that when a limitation has been imposed upon the closing argument (as not within the province of the jury) and counsel has been specifically informed by the judge that further comment on such matters will be viewed as contemptuous, the contempt power can and should be exercised by the court. (See In re *Magnes* (1972), 8 Ill. App. 3d 249, 290 N.E. 2d 378.) The orderly and impartial administration of justice requires the reasonable use of the contempt power, not only to ensure the defendant a fair trial, but also to ensure that the "interest of the public . . . shall not be thwarted". (A.B.A. Standards relating to the Administration of Criminal Justice (1974), par. 7. 1.). If the State transgresses the limits imposed upon closing argument, the defendant may be entitled to a new trial, and, in some instances, to reversal. No element of actual and material obstruction is required in such situations. If the defense transgresses the limits imposed upon closing argument, there is no corresponding remedy available to the State. Thus, the duty of the trial court to provide a fair and impartial trial both to defendant and to the public would be thwarted without the possible exercise of the contempt power. We conclude and hold that the citation of Oliver for contempt in the case at bar was a proper exercise of the trial court's contempt power.

AFFIRMED.

SEIDENFELD, P.J., and GUILD, J., concur.

UNITED STATES OF AMERICA

State of Illinois,)
Appellate Court,) ss.
Second District,)

I, Loren J. Strotz, Clerk of the Appellate Court, in and for said Second Judicial District of the State of Illinois, and the keeper of the records and Seal thereof, do hereby certify that the foregoing is a true, full and complete copy of the Opinion of the said Appellate Court in the above enitled cause of record in my said office.

In testimony whereof, I have set my hand and affixed the seal of the said Appellate Court, in Elgin, in said State, this 20th day of January, A.D. 1975.

/s/Loren J. Strotz

Clerk
Appellate Court, Second District.

APPENDIX B

(ORDER OF THE SUPREME COURT OF ILLINOIS DENYING LEAVE TO APPEAL)

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

May Term, 1975

BE IT REMEMBERED, that, to-wit: On the 27th day of May, 1975, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

No. 47401

PEOPLE EX REL. HONORABLE ALFRED E. WOODWARD,

Respondent,

vs.

FRANK W. OLIVER, AN ATTORNEY,

Petitioner.

Petition for leave to appeal from the Appellate Court, Second District, 73-88, 72-123-G.

Now on this day, the Court having duly considered the petition for leave to appeal herein, and being now fully

advised of and concerning the premises, doth overrule the prayer of the petition and denies leave to appeal herein.

I, CLELL L. WOODS, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said Court, this 19th day of June, 1975.

/s/ CLELL L. WOODS
Clerk
Supreme Court of the State of Illinois

APPENDIX C

(WRITTEN CONTEMPT ORDER OF THE TRIAL COURT, ENTERED EX PARTE AFTER INITIAL ORAL ADJUDICATION)

STATE OF ILLINOIS)
) SS
COUNTY OF DU PAGE)

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT,
DU PAGE COUNTY, ILLINOIS

No. 72-123 G

PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff,

vs.

MICHAEL T. SEYMOUR,
Defendant,

and FRANK OLIVER,
an Attorney at Law.

O R D E R

Now, and in the name and by the authority of the PEOPLE OF THE STATE OF ILLINOIS, the defendant, FRANK OLIVER, being present in his own proper person, and the matter against said defendant for alleged

direct contempt is considered by this Court, and the Court having cited said defendant for contempt and said defendant having made answer thereto, the Court hereby FINDS:

1. That the defendant, Frank Oliver, is an attorney and officer of this Court and at all times hereinafter mentioned was representing MICHAEL SEYMOUR.

2. That on December 15, 1972, the case of the People of the State of Illinois vs. MICHAEL SEYMOUR, Case No. 72-123 G was in the process of being heard in regular course before this Court.

3. That a petit jury had been duly empanelled and sworn to try the issues before them in this case and that said case had been in trial since December 11, 1972.

4. That on December 15, 1972, during the closing argument being made in behalf of the said MICHAEL SEYMOUR, the defendant, FRANK OLIVER, was requested by the Court to retire to Chambers for the purpose of discussing an objection that had been made and ruled upon by the Court; that the defendant, FRANK OLIVER, refused to accompany the Court into Chambers when requested, he then refused to accompany the Bailiff into Chambers as directed by the Court, and by reason of the foregoing the Court was required to excuse the jury in order that the Court might confer with counsel pertaining to the objection then pending before the Court.

5. That later in said proceedings on the same date and during the final argument, the defendant, FRANK OLIVER, made repeated reference to matters excluded upon objection and not in evidence, being the intent of the defendant at the time of the offense; further, after

being admonished in this regard by the Court, he continued to comment in the presence of the jury upon the rulings made by the Court on said objections.

6. That the conduct of the defendant, FRANK OLIVER, which took place in front of this Court while in open session and in the presence of the jury, tended to impede and interrupt the proceedings and lessen the dignity of this Court.

7. That the Court further finds that the defendant, FRANK OLIVER, who is now and here present in open Court, is by reason of said conduct guilty of direct contempt of this Court.

IT IS THEREFORE ORDERED AND ADJUDGED that the said FRANK OLIVER, because of said contempt as stated in paragraphs one through four set forth above, be fined the sum of TWO HUNDRED FIFTY ($250.00) DOLLARS.

IT IS FURTHER ORDERED AND ADJUDGED that said defendant, FRANK OLIVER, because of the contempt as stated in paragraphs five through seven set forth above, in alluding to evidence that had been objected to and to which objection thereto had been sustained, be fined in the sum of ONE HUNDRED ($100.00) DOLLARS.

ENTERED nunc pro tunc, December 15, 1972.

.....

JUDGE